

EXHIBIT A

Excerpts from September 19, 2018 deposition of

Oracle's expert, Barbara Frederiksen-Cross

PUBLIC REDACTED VERSION

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 Case No. 2:14-cv-01699-LRH-CWH

4 RIMINI STREET, INC., a Nevada
5 corporation

6 Plaintiff,
7 v.

8 ORACLE AMERICA, INC., a Delaware
9 corporation; and ORACLE
10 INTERNATIONAL CORPORATION, a
11 California corporation
12 Defendants.

13 ORACLE AMERICA, INC., a Delaware
14 corporation; and ORACLE
15 INTERNATIONAL CORPORATION, a
16 California corporation
17 Counterclaimants,
18 v.

19 RIMINI STREET, INC., a Nevada
20 corporation; SETH RAVIN, an
21 individual,
22 Counterdefendants,

23 VIDEOTAPED DEPOSITION OF
24 BARBARA FREDERIKSEN-CROSS
25 *HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY*
DATE TAKEN: SEPTEMBER 19, 2018
REPORTED BY: PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 2972276
PAGES 1 - 354

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1	I N D E X	1	SEPTEMBER 19, 2018
2		2	[9:11 a.m.]
3	BARBARA FREDERIKSEN-CROSS	3	THE VIDEOGRAPHER: Good morning.
4	By Mr. Vandeveld: 10	4	We're going on the record at 9:11 09:11:19
5		5	a.m. on September 19, 2018. Please note 09:11:25
6	Request for information: None	6	that the microphones are sensitive and 09:11:31
7	Request for documents: None	7	may pick up whispering, private 09:11:33
8		8	conversation and cellular interference. 09:11:35
9	I N D E X	9	Please silence all cell phones and place 09:11:38
10		10	away from the microphones as they 09:11:40
11	EXHIBIT 4251 18	11	interfere with deposition audio. Audio 09:11:43
12	Frederiksen-Cross Surrebuttal	12	and video recording will continue to 09:11:46
13	Exhibit A, Frederiksen-Cross CV	13	take place unless all parties agree to 09:11:49
14	EXHIBIT 4252 43	14	go off the record. 09:11:51
15	Supplemental Expert Report of	15	This is media number 1 of the 09:11:52
16	Barbara Frederiksen-Cross,	16	videorecorded deposition of Barbara 09:11:54
17	258 pages	17	Frederiksen-Cross, taken by counsel for 09:11:58
18	EXHIBIT 4253 265	18	plaintiff in the matter of Rimini Street 09:12:00
19	Frederiksen-Cross Exhibit MMM	19	Incorporated versus Oracle International 09:12:02
20	EXHIBIT 4254 265	20	Corporation, filed in the United States 09:12:08
21	Frederiksen-Cross Exhibit SSS	21	District Court, District of Nevada, Case 09:12:11
22	EXHIBIT 4255 284	22	Number 2:14-CV-01699-LRH-CWH. 09:12:13
23	Exhibit: Source Code	23	This deposition is being held at 09:12:25
24	EXHIBIT 4256 302	24	555 Mission Street, Suite 3000, San 09:12:29
25	Frederiksen-Cross Exhibit PPP	25	Francisco, California 94105. 09:12:34
	Page 6		Page 8
1	EXHIBIT 4257 329	1	My name is Brandon Miller for the 09:12:37
2	Frederiksen-Cross Exhibit III	2	firm Veritext Legal Solutions, and I'm 09:12:39
3		3	the videographer. The court reporter is 09:12:41
4		4	Paul Frederickson from the firm Veritext 09:12:43
5		5	Legal Solutions. I'm not related to any 09:12:47
6		6	party in this action, nor am I 09:12:48
7		7	financially interested in the outcome. 09:12:51
8		8	Counsel and all present in the 09:12:52
9		9	room will now state their appearances 09:12:54
10		10	and affiliations for the record. 09:12:55
11		11	MR. VANDEVELDE: Eric Vandeveld, 09:12:58
12		12	with Gibson Dunn, on behalf of Rimini 09:12:59
13		13	Street. 09:13:02
14		14	MR. McCracken: Casey McCracken, 09:13:02
15		15	from Gibson Dunn, representing Rimini 09:13:04
16		16	Street and Seth Ravin. 09:13:06
17		17	MS. JOHNSON: Lisa Johnson, with 09:13:06
18		18	Rimini Street, for Mr. Ravin and Rimini 09:13:08
19		19	Street. 09:13:11
20		20	MR. REILLY: John Reilly, 09:13:11
21		21	Associate General Counsel, Rimini 09:13:14
22		22	Street, representing Rimini Street. 09:13:15
23		23	MR. POLITO: John Polito, Morgan 09:13:16
24		24	Lewis & Bockius, on behalf of defendants 09:13:20
25		25	and counterclaimants, Oracle 09:13:21
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1 A. Yes. 12:30:06	1 it could also be the specific knowledge of what 12:32:38
2 Q. Okay. 12:30:07	2 needs to be updated, how it needs to be 12:32:42
3 And you're saying it's consistent 12:30:07	3 updated, how it needs to be tested. You know, 12:32:46
4 with the court's prior rulings and also 12:30:09	4 any of those things as well, to the extent that 12:32:48
5 discussion in the Ninth Circuit briefing. 12:30:12	5 they were developed on one customer's 12:32:50
6 Whose briefing, Oracle's or Rimini, is it 12:30:14	6 environment and provided to another customer 12:32:53
7 consistent with? 12:30:16	7 would really sort of fall within that rubric. 12:32:57
8 A. It was my understanding -- or it 12:30:19	8 Q. Do you consider Break Fix updates, 12:33:01
9 is my understanding that it's consistent with 12:30:20	9 do those fall within this definition of update 12:33:06
10 the -- what the court said -- 12:30:21	10 that you use in this paragraph? 12:33:08
11 Q. Okay. 12:30:23	11 MR. POLITO: Objection, vague. 12:33:11
12 A. -- in that hearing with respect to 12:30:24	12 A. A Break Fix that was shared across 12:33:12
13 the -- both the characterization of cross-use 12:30:26	13 customers would. I didn't do extensive 12:33:15
14 and the fact that there are many different 12:30:30	14 analysis of Break Fix updates. My focus was 12:33:18
15 forms of cross-use. 12:30:32	15 primarily on the tax and regulatory. But I can 12:33:20
16 Q. All right. 12:30:33	16 conceive of no situation where one developed in 12:33:24
17 If you could turn to paragraph 23. 12:30:33	17 one customer's environment and then provided to 12:33:27
18 It says: 12:30:41	18 other customers would not fall within this 12:33:30
19 I understand that any development 12:30:41	19 definition as well. 12:33:32
20 or testing of an update to the Oracle software 12:30:43	20 Q. Did you do -- you said you didn't 12:33:34
21 with one customer's licensed Oracle software 12:30:46	21 do extensive analysis. Did you do any analysis 12:33:36
22 constitutes cross-use if the update is provided 12:30:50	22 of Break Fix updates? 12:33:38
23 to another customer and that such cross-use 12:30:53	23 A. I believe I mix -- I mention a 12:33:42
24 violates all relevant Oracle licenses." 12:30:57	24 couple of fix updates in my report in the 12:33:44
25 In this paragraph, when you say 12:31:00	25 context -- not of PeopleSoft, but of some of 12:33:47
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1 the word "update," what are you referring to? 12:31:02	1 the other products. So -- 12:33:49
2 A. This would encompass other update 12:31:15	2 Q. Are you offering any opinions that 12:33:53
3 to an individual program, update to the 12:31:18	3 any Break Fix updates were cross-used? 12:33:54
4 software product as a whole, or even update to 12:31:22	4 MR. POLITO: Objection, overbroad. 12:33:57
5 the environment. Any form of modification that 12:31:26	5 A. Let me refresh my recollection 12:33:58
6 was performed using one customer's license and 12:31:31	6 with respect to Break Fix, counsel. I just 12:34:00
7 then that modification irrespective of its 12:31:34	7 don't know if we gave specific example of those 12:34:09
8 scope once provided to another license or 12:31:39	8 or not. 12:34:11
9 licensee, a different customer would be 12:31:42	9 [Pause.] 12:34:12
10 cross-use. 12:31:46	10 A. Would you just restate your 12:34:30
11 Q. So did -- yeah. I guess what I'm 12:31:47	11 question again for me, please? 12:34:31
12 getting at is, when you say "update" here, are 12:31:49	12 Q. Are you offering any opinions that 12:34:33
13 you talking about a specific implementation of 12:31:52	13 any Break Fix updates were cross-used? 12:34:35
14 an update or an update itself? So, for 12:31:57	14 MR. POLITO: Objection, overbroad. 12:34:39
15 example, let's say ten clients need to update 12:32:02	15 [Pause.] 12:35:25
16 their payroll software to accommodate Arizona, 12:32:07	16 [REDACTED]
17 our previous example. Are you saying that an 12:32:13	17 [REDACTED]
18 update is -- the update in the abstract that 12:32:15	18 [REDACTED]
19 all ten of those customers need or the 12:32:17	19 [REDACTED]
20 particular implementation for each of those ten 12:32:20	20 [REDACTED]
21 customers? 12:32:22	21 [REDACTED]
22 MR. POLITO: Objection, vague, 12:32:23	22 [REDACTED]
23 compound, incomplete hypothetical. 12:32:25	23 Q. Well, why don't we -- why don't we 12:35:55
24 A. I would characterize it as -- 12:32:31	24 move on? We'll get to those later. 12:35:56
25 certainly, it could be the update itself, but 12:32:36	25 In paragraph 23, you use the word 12:35:58
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1 "provided." You say "constitutes cross-use if 12:36:01	1 that same line in client B's environment is 12:38:22
2 the update is provided...." 12:36:03	2 cross-use in your opinion? 12:38:25
3 Do you mean provided in any way? 12:36:06	3 MR. POLITO: Same objections. 12:38:26
4 Or how do you define that word "provided" is 12:36:13	4 A. Well, just to be clear, we 12:38:27
5 the better question? 12:36:15	5 excluded any examples that were that small from 12:38:29
6 A. I would think really provided in 12:36:18	6 our analysis with respect to ident- -- or the 12:38:31
7 any way to the other customer aside from those 12:36:25	7 examples we identify of -- of cross-use. 12:38:35
8 specific operations that are allowed under the 12:36:30	8 But I think, speaking in a purely 12:38:38
9 license, which will -- again, you would need to 12:36:33	9 hypothetical sense divorced from the facts of 12:38:41
10 turn to the license to be certain. 12:36:37	10 the case, yeah, that memorization, even of a 12:38:44
11 Q. So if a Rimini engineer goes into 12:36:38	11 single line. Because one of the things you're 12:38:47
12 client -- I use client A and B for initial and 12:36:42	12 -- you're imputing into your hypothetical that 12:38:50
13 subsequent client. So if an engineer goes into 12:36:45	13 you haven't really clarified, source code isn't 12:38:51
14 client A's environment and codes an update, and 12:36:48	14 like a piece of paper where you just write 12:38:54
15 client B needs that same update, engineer 12:36:52	15 something down. You have to figure out where 12:38:56
16 remotely accesses, logs into client B's 12:36:55	16 in the code to make the change. You have to 12:38:57
17 environment and codes, retypes, that same 12:36:59	17 know how to test the change. You know, you 12:39:00
18 update, is that providing the same update or 12:37:01	18 might be making a one line change, but it's -- 12:39:04
19 not under your definition under 23? 12:37:04	19 the one line change requires work beyond just 12:39:06
20 MR. POLITO: Objection, incomplete 12:37:06	20 typing 80 characters of text. So -- 12:39:10
21 hypothetical. 12:37:08	21 Q. If you remember the context then 12:39:13
22 A. It -- it depends how -- what -- 12:37:10	22 and you then go into client B's and with that 12:39:15
23 what they're referencing and what they're -- I 12:37:12	23 context in mind, you retype it, in your 12:39:19
24 mean, just the fact that they're typing doesn't 12:37:15	24 opinion, that's cross-use? 12:39:21
25 mean that they're not providing the same 12:37:16	25 A. Sure, because you -- 12:39:22
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1 update. Are they looking at the original 12:37:18	1 MR. POLITO: Objection, vague. 12:39:24
2 update? Are they looking at pseudocode for the 12:37:21	2 A. -- you may have memorized from 12:39:25
3 original update? Are they looking at specific 12:37:23	3 client A a certain thing that you can search 12:39:27
4 programmatic instructions about make this 12:37:26	4 quickly to get you to that context. So, again, 12:39:30
5 change at line 43 or line 43, do X? In those 12:37:28	5 it's situational. It depends what you're 12:39:32
6 cases, I would say yes, that update is being 12:37:33	6 referencing. But to the extent you're making 12:39:33
7 provided to the other customer because the 12:37:37	7 any reference to the work you did on client A 12:39:35
8 second customer is benefiting directly from the 12:37:39	8 in order to incorporate that work into another 12:39:38
9 characterization of the update that was 12:37:44	9 client's environment, you're cross using it. 12:39:40
10 developed on the first -- 12:37:46	10 Q. Okay. 12:39:42
11 Q. What about if the update is just 12:37:48	11 And so just to circle back to the 12:39:43
12 one line and the engineer remembers that one 12:37:50	12 word "provided." So provided doesn't depend on 12:39:46
13 line and retypes it in client B's environment? 12:37:54	13 actual copying of the code like copy, paste or 12:39:49
14 Is that providing it? 12:37:58	14 transfer through a file. It can be -- it's 12:39:52
15 MR. POLITO: Objection, incomplete 12:38:01	15 broader than that? 12:39:54
16 hypothetical. 12:38:02	16 MR. POLITO: Objection, misstates 12:39:55
17 A. It's my understanding that it can 12:38:02	17 facts incomplete hypothetical. 12:39:56
18 be, counsel, because it's my understanding that 12:38:04	18 A. Again, it depends in my 12:39:58
19 just memorization of something can be a form of 12:38:06	19 understanding on whether the benefit of the 12:40:02
20 copying. 12:38:11	20 work associated with that fix was -- that was 12:40:05
21 Q. Even though that one line is 12:38:11	21 derived from the initial prototyping is carried 12:40:10
22 Rimini's creation, a Rimini engineer typed it, 12:38:13	22 forward into the new environment when that 12:40:14
23 doesn't contain Oracle code -- 12:38:17	23 update is provided. So you're providing the 12:40:17
24 A. But -- 12:38:19	24 same update, and you are providing it in a way 12:40:19
25 Q. -- providing that same retyping 12:38:20	25 that relies in any way on your use of the 12:40:22
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39 (Pages 150 - 153)

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<p>1 Circuit's opinion used the word "benefit"? 13:40:44</p> <p>2 A. I think it used a more strained 13:40:49</p> <p>3 term, something like under color of one license 13:40:51</p> <p>4 on behalf of another or -- or a little bit more 13:40:54</p> <p>5 complex language. I quote it in my report if 13:40:57</p> <p>6 you would like to me to find it. 13:40:59</p> <p>7 Q. So are you aware that it did not 13:41:01</p> <p>8 use the word "benefit"? 13:41:03</p> <p>9 A. The specific section that I'm 13:41:04</p> <p>10 recalling I do not recall using the -- the word 13:41:06</p> <p>11 "benefit." I didn't -- I didn't memorize the 13:41:09</p> <p>12 entire ruling, but the passages that I most 13:41:11</p> <p>13 clearly recall did not. 13:41:13</p> <p>14 Q. Do you know whether the district 13:41:15</p> <p>15 court used the word "benefit"? 13:41:16</p> <p>16 A. I don't recall specifically as I 13:41:18</p> <p>17 sit here, counsel. 13:41:20</p> <p>18 Q. Do you know any court that has 13:41:21</p> <p>19 ever applied the test you articulate here in 24 13:41:26</p> <p>20 with respect to cross-use -- 13:41:32</p> <p>21 MR. POLITO: Objection. 13:41:33</p> <p>22 BY MR. VANDEVELDE: 13:41:34</p> <p>23 Q. -- using the word "benefit"? 13:41:34</p> <p>24 MR. POLITO: I'm sorry, counsel. 13:41:36</p> <p>25 Objection, misstates testimony, 13:41:36</p> <p style="text-align: right;">Page 158</p>	<p>1 I mean, let's just focus on client A. Client A 13:43:07</p> <p>2 has an environment, Rimini engineer goes in and 13:43:09</p> <p>3 provides an update. Is that cross-use? There 13:43:12</p> <p>4 is no client B yet. It's just -- is that 13:43:15</p> <p>5 cross-use then? 13:43:17</p> <p>6 MR. POLITO: Objection, incomplete 13:43:18</p> <p>7 hypothetical. Object to the extent it 13:43:20</p> <p>8 calls for a legal conclusion, misstates 13:43:21</p> <p>9 testimony. 13:43:23</p> <p>10 BY MR. VANDEVELDE: 13:43:23</p> <p>11 Q. Under your definition of cross-use 13:43:23</p> <p>12 as applied in your report. 13:43:25</p> <p>13 A. Let me clarify your hypothetical. 13:43:27</p> <p>14 This is in your hypothetical something that 13:43:29</p> <p>15 Rimini is completely -- is creating completely 13:43:34</p> <p>16 from scratch without reference to anything from 13:43:36</p> <p>17 any other customer or any other place. It's -- 13:43:38</p> <p>18 they're coming in, and it's the brand new, the 13:43:42</p> <p>19 first act, if you will. 13:43:43</p> <p>20 Q. Uh-huh, yes. 13:43:44</p> <p>21 A. They're coming in and creating the 13:43:46</p> <p>22 very first mod ever created. Was that an act 13:43:47</p> <p>23 of cross-use? Not at that point in time 13:43:50</p> <p>24 because there has been no use or provision to 13:43:52</p> <p>25 another customer. 13:43:55</p> <p style="text-align: right;">Page 160</p>
<p>1 overbroad, vague, outside the scope. 13:41:39</p> <p>2 A. My recollection is that the 13:41:48</p> <p>3 language was not used solely for similar 13:41:49</p> <p>4 language to that which I would have attempted 13:41:53</p> <p>5 to capture here. 13:41:56</p> <p>6 Q. Let's say -- let's say Rimini has 13:41:59</p> <p>7 a client, client A, that needs an update, and 13:42:05</p> <p>8 there is no client B. It only has one client. 13:42:09</p> <p>9 Rimini creates the update. And six months 13:42:13</p> <p>10 later, client B signs up with Rimini. Is it 13:42:16</p> <p>11 cross-use under your definition to -- for 13:42:24</p> <p>12 Rimini to leverage that prior update they had 13:42:28</p> <p>13 created in client B's environment? 13:42:31</p> <p>14 MR. POLITO: Objection, vague, 13:42:34</p> <p>15 incomplete hypothetical. 13:42:35</p> <p>16 A. It's my understanding that the 13:42:41</p> <p>17 specific behaviors that the court prohibited, 13:42:44</p> <p>18 which I understand to be cross-use in the 13:42:48</p> <p>19 Rimini 1 matter, extend to future customers as 13:42:50</p> <p>20 well. So in your scenario, if -- if it would 13:42:54</p> <p>21 be cross-use with a current customer, it would 13:42:57</p> <p>22 also be cross-use with a -- the same behavior 13:42:59</p> <p>23 with a future customer would also constitute 13:43:02</p> <p>24 cross-use. 13:43:04</p> <p>25 Q. Yeah. And let's break that down. 13:43:05</p> <p style="text-align: right;">Page 159</p>	<p>1 Q. Okay. 13:43:56</p> <p>2 And then six months down -- down 13:43:57</p> <p>3 the road, Rimini gets client B, client B signs 13:44:01</p> <p>4 up with Rimini, and client B has the same 13:44:04</p> <p>5 issue. 13:44:06</p> <p>6 A. Uh-huh. 13:44:07</p> <p>7 Q. Can Rimini leverage that prior 13:44:08</p> <p>8 work it did, that knowledge, know-how, update, 13:44:11</p> <p>9 code, to provide to client B -- 13:44:16</p> <p>10 MR. POLITO: Objection. 13:44:16</p> <p>11 Q. -- without being cross-use? 13:44:18</p> <p>12 MR. POLITO: Objection, calls for 13:44:20</p> <p>13 a legal conclusion, incomplete 13:44:22</p> <p>14 hypothetical, vague. 13:44:23</p> <p>15 A. Would you either substitute 13:44:25</p> <p>16 something for the word "leverage" or clarify 13:44:27</p> <p>17 what you mean by leverage? Just that's kind of 13:44:29</p> <p>18 a fuzzy term really. 13:44:32</p> <p>19 Q. Well, let's keep it to provide the 13:44:33</p> <p>20 same update. Rimini created a particular file, 13:44:35</p> <p>21 it's 100 percent Rimini code, to help client A. 13:44:38</p> <p>22 Client B doesn't exist yet. Six months down 13:44:41</p> <p>23 the road, client B signs up with Rimini. They 13:44:46</p> <p>24 have the same issue that client A had. Can 13:44:48</p> <p>25 Rimini use that same code that it created, 100 13:44:51</p> <p style="text-align: right;">Page 161</p>

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1 percent Rimini code, to fix that issue with 13:44:53	1 MR. POLITO: Objection, vague, 13:46:35
2 client B's environment -- 13:44:56	2 incomplete hypothetical, calls for a 13:46:38
3 MR. POLITO: Objection. 13:44:57	3 legal conclusion. 13:46:38
4 BY MR. VANDEVELDE: 13:44:57	4 A. What are the other parts that you 13:46:40
5 Q. -- or is that cross-use under your 13:44:57	5 contemplate when you say -- 13:46:41
6 definition? 13:44:59	6 Q. I don't know. I'm asking you. I 13:46:42
7 MR. POLITO: Objection, calls for 13:45:00	7 suggested one. It doesn't have to be that one. 13:46:44
8 a legal conclusion, incomplete 13:45:02	8 But what specifically is the cross-use in that 13:46:46
9 hypothetical, vague. 13:45:03	9 -- in that hypothetical? 13:46:48
10 A. I need two more clarifications if 13:45:05	10 MR. POLITO: Objection, calls for 13:46:49
11 you'll indulge me here, counsel. The first is, 13:45:06	11 a legal conclusion, vague, incomplete 13:46:50
12 is this code, for instance, that is 13:45:09	12 hypothetical. 13:46:52
13 modification to PeopleSoft or some other Oracle 13:45:11	13 A. The provision to another customer 13:46:54
14 component? It's not just some hypothetical 13:45:14	14 for that customer's benefit. 13:47:00
15 standalone that -- 13:45:16	15 Q. Does it matter how it's provided 13:47:02
16 Q. Yeah, it's in connection with 13:45:18	16 whether its file is transferred or the ten 13:47:05
17 PeopleSoft environment. 13:45:20	17 lines are copy, pasted or the engineer 13:47:11
18 A. Okay. And the other thing is, 13:45:21	18 remembers those ten lines, or is that 13:47:13
19 just to be sure that we are absolutely clear, 13:45:23	19 irrelevant? It's still cross-use? 13:47:16
20 when you say "Rimini creates it," they create 13:45:25	20 MR. POLITO: Objection, calls for 13:47:19
21 it totally from scratch in your hypothetical? 13:45:27	21 a legal conclusion. 13:47:20
22 Q. Well, it fits within the context 13:45:30	22 A. With respect to the material I 13:47:21
23 of client A's environment. 13:45:32	23 provided an opinion on, counsel, in my report, 13:47:22
24 A. Right, right. 13:45:34	24 I don't site examples of memorization. I have 13:47:26
25 Q. Client A has a PeopleSoft 13:45:35	25 set that issue aside with respect to what I -- 13:47:31
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1 environment. Let's take the Arizona payroll 13:45:36	1 I point to in my report. 13:47:34
2 example. Rimini creates an update. Let's say 13:45:39	2 With respect to your question of: 13:47:37
3 ten -- let's say it's ten lines of code, Rimini 13:45:42	3 Does it matter if it comes in as a file that's 13:47:39
4 wrote those ten lines of code. And client B 13:45:44	4 applied as a patch or as perhaps a snippet of 13:47:42
5 six months later signs up, and they need those 13:45:48	5 code in a textual file, or even by Rimini 13:47:44
6 same ten lines of code. Can Rimini use those 13:45:51	6 looking at one client's screen and typing at 13:47:49
7 same ten lines of code in client B's 13:45:56	7 the other? I would consider all of those to be 13:47:51
8 environment, or is that cross-use? 13:45:59	8 acts of provision that would constitute 13:47:54
9 MR. POLITO: Objection, calls for 13:46:00	9 cross-use of that fix. 13:47:57
10 a legal conclusion, incomplete 13:46:03	10 Q. Why -- why does the provision of 13:47:58
11 hypothetical. 13:46:04	11 those ten lines of code that Rimini created, 13:48:04
12 A. As I understand cross-use, that 13:46:05	12 why is that cross-use? Who is benefiting from 13:48:06
13 would be cross-use. 13:46:07	13 it -- 13:48:11
14 Q. Okay. 13:46:08	14 MR. POLITO: Objection. 13:48:11
15 A. Because, again, the first -- the 13:46:08	15 BY MR. VANDEVELDE: 13:48:12
16 fix was developed in the first client's 13:46:10	16 Q. -- other than client B? 13:48:12
17 environment and then is being applied for the 13:46:14	17 MR. POLITO: Pardon me. 13:48:13
18 benefit of a second client. 13:46:16	18 Objection, compound, calls for a 13:48:15
19 Q. Okay. 13:46:18	19 legal conclusion, vague, incomplete 13:48:17
20 So which part of that is 13:46:23	20 hypothetical. 13:48:21
21 cross-use? 13:46:28	21 A. The two beneficiaries in the 13:48:24
22 MR. POLITO: Objection, vague. 13:46:29	22 scenario that you describe are, first of all, 13:48:27
23 BY MR. VANDEVELDE: 13:46:30	23 of course, Rimini because it doesn't have to 13:48:29
24 Q. The provision of those ten lines 13:46:30	24 recreate a solution, retest the solution, go 13:48:32
25 of code to client B? 13:46:32	25 through all of the burden of defining the 13:48:36
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1 solution. You know, it's able to, to use your 13:48:38	1 that original work in client A's environment 13:50:58
2 word, to leverage the solution that it had 13:48:42	2 was cross-used because it benefited a future 13:51:00
3 already developed. 13:48:46	3 customer, client B? 13:51:04
4 The second beneficiary is client 13:48:46	4 A. The cross-use occurs when it's 13:51:05
5 B, who you've already articulated in your 13:48:50	5 provided to customer B. Just as the court's 13:51:07
6 hypothetical needs that fix. And so getting 13:48:52	6 ruling, as I understand it, contemplated that 13:51:15
7 that fix for their use is a benefit to client 13:48:56	7 cross-use could occur for a future customer, 13:51:18
8 B. 13:49:00	8 and that's clearly the -- the situation here 13:51:23
9 Q. But your definition in paragraph 13:49:01	9 that I understand you to be offering in your 13:51:26
10 24 is benefits another customer. So what about 13:49:02	10 hypothetical. 13:51:28
11 the provision of that fix to client B benefits 13:49:07	11 Q. Let's unpack the word "provision." 13:51:31
12 another customer? Who is that other customer? 13:49:12	12 When -- are you saying that the provision is 13:51:34
13 MR. POLITO: Objection, misstates 13:49:16	13 the distribution? Like what is -- what is the 13:51:37
14 document. 13:49:17	14 reproduction derivative work or distribution 13:51:40
15 A. That's client B in our scenario. 13:49:17	15 you're talking about when you say "the 13:51:43
16 Client A is the originating customer, if I 13:49:19	16 provision of the fix"? 13:51:45
17 understood your hypothetical correctly. And 13:49:21	17 MR. POLITO: Misstates testimony. 13:51:47
18 client B is the other customer who is receiving 13:49:24	18 A. Okay. In the beginning, we have 13:51:57
19 that fix for its benefit, because, as you 13:49:26	19 the reproduction; that is to say, we are taking 13:51:58
20 stated in your hypothetical, they need it. 13:49:29	20 some reproduction, distribution or creation of 13:52:02
21 Did I misconstrue some part of the 13:49:37	21 derivative work. We are reproducing some -- 13:52:07
22 question? 13:49:39	22 something that already exists on customer A's 13:52:10
23 Q. No. You -- you identified the 13:49:39	23 environment that's a part of PeopleSoft, 13:52:13
24 cross-use as the provision to client B; 13:49:40	24 whether it's an Oracle-supplied fix or a 13:52:15
25 correct? 13:49:45	25 Rimini-supplied fix. We're reproducing that, 13:52:18
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1 A. That's correct. 13:49:45	1 maybe copying it onto a thumb drive or 13:52:22
2 Q. Okay. 13:49:45	2 something that we send to another customer, 13:52:25
3 So what other customer benefits 13:49:47	3 maybe distributing it via FTP. Any -- any 13:52:27
4 from the provision of the fix to client B? 13:49:52	4 means of actually taking that original content 13:52:31
5 MR. POLITO: Objection, misstates 13:49:55	5 that was developed for customer B -- A or 13:52:42
6 document, asked and answered. 13:49:56	6 use -- or developed using customer A's 13:52:44
7 A. I'm trying to understand your 13:50:00	7 environment, I guess to be more clear, and 13:52:47
8 question, counsel. And I'm sorry, let me just 13:50:01	8 delivering that to another customer. So 13:52:50
9 restate what I understand your hypothetical to 13:50:04	9 whether you deliver it via looking at the 13:52:51
10 be to make sure I didn't get something wrong. 13:50:06	10 screen and typing the same changes, or deliver 13:52:56
11 You're saying Rimini develops a 13:50:08	11 it via sending it via AFW or via FTP or via 13:52:58
12 fix in customer A's environment, ten-line fix. 13:50:10	12 email, any -- any point at which that work is 13:53:05
13 A while down the road, customer B comes along 13:50:15	13 delivered to someone not the licensee is -- is 13:53:10
14 and says, "Hey, I need a fix for X," and Rimini 13:50:19	14 really I guess the best fence I can put about 13:53:13
15 goes, "Aha, I have that." Then I -- and Rimini 13:50:22	15 it. 13:53:16
16 takes the fix they had developed for customer A 13:50:26	16 Q. Well, wait just let me pause 13:53:17
17 and provides that fix to customer B. That's 13:50:29	17 there. Are you saying that the recipient 13:53:18
18 the -- the scenario that I'm -- I'm talking 13:50:34	18 doesn't have -- that's not part of the 13:53:21
19 about here or that -- and the customer 13:50:37	19 hypothetical? 13:53:22
20 receiving the -- the benefit another customer, 13:50:40	20 A. No, no, it's not the original 13:53:22
21 the -- another customer in your hypothetical, 13:50:44	21 licensee. 13:53:24
22 as I understand it, is customer B, who is 13:50:46	22 Q. The original licensee. Okay. 13:53:24
23 benefiting from the work that we've done on 13:50:50	23 A. So you have customer A has 13:53:25
24 customer A's environment. 13:50:54	24 customer A's license. Customer B has customer 13:53:27
25 Q. So you're looking back and saying 13:50:56	25 B's license. We hope they do. As soon as you 13:53:31
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1 take the fruit of the labor you have done in 13:53:33	1 it's only a one-line file, and it has nothing 13:56:08
2 customer A's environment and provide that fruit 13:53:35	2 to do with the environment. And -- you know, I 13:56:10
3 to customer B, who was not the original 13:53:39	3 just -- we can go into hypotheticals forever. 13:56:12
4 licensee, it's my understanding that you've -- 13:53:43	4 But -- 13:56:14
5 you've committed an act of cross-use. 13:53:45	5 Q. Do you agree that engineers get 13:56:15
6 Q. So let me make it more stark. 13:53:49	6 more proficient and gain experience as they 13:56:18
7 Let's say the update is just one line of code, 13:53:51	7 perform their work over time? 13:56:22
8 just a simple line of code. And can the same 13:53:54	8 MR. POLITO: Objection, vague. 13:56:24
9 engineer who solved the problem and added that 13:54:00	9 A. With respect to what type of work? 13:56:30
10 one line of code to client A's environment add 13:54:02	10 Q. PeopleSoft engineer who has worked 13:56:33
11 that same line of code six months later to 13:54:04	11 on -- would you agree that a PeopleSoft 13:56:35
12 client B's environment? 13:54:07	12 engineer who is working day in and day out in a 13:56:37
13 MR. POLITO: Objection, incomplete 13:54:08	13 PeopleSoft environment acquires knowledge and 13:56:39
14 hypothetical, calls for speculation, 13:54:10	14 gains experience about where things are 13:56:42
15 vague. 13:54:12	15 located, about how things function, about 13:56:43
16 A. Again, you know, I specifically 13:54:14	16 different modules, et cetera, would you think 13:56:45
17 excluded from my analysis very small examples 13:54:17	17 that they gain experience and knowledge and 13:56:47
18 like that because of my concern that the work 13:54:20	18 proficiency in their job over time? 13:56:50
19 required to determine in any particular case 13:54:24	19 MR. POLITO: Objection, vague, 13:56:53
20 whether a single line of code was or was not 13:54:27	20 compound. 13:56:56
21 necessarily cross-use might outweigh the -- the 13:54:30	21 A. One would hope that they do so. 13:56:59
22 benefit of doing so. 13:54:34	22 Q. So how -- do you believe that the 13:57:04
23 But the answer -- it's the same 13:54:37	23 same engineer can service both client A and 13:57:08
24 answer I gave you before lunch, is it will 13:54:39	24 client B in my hypothetical where both needed 13:57:13
25 depend very much on what was entailed in the 13:54:41	25 the same line of code? 13:57:16
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1 development of that code. If the development 13:54:43	1 MR. POLITO: Objection, vague, 13:57:17
2 of that single line of code relied on the use 13:54:45	2 calls for a legal conclusion, incomplete 13:57:18
3 of customer A's environment to identify where 13:54:50	3 hypothetical, vague as to "in my 13:57:20
4 the code should be -- or identify what the line 13:54:54	4 hypothetical." 13:57:23
5 of code should be, identify where the line of 13:54:59	5 A. In the hypothetical where you 13:57:23
6 code should be asserted or deleted, identify 13:55:01	6 postulated most recently, and I assume that's 13:57:31
7 how to test the code, actually test the one 13:55:04	7 the one where we're still talking about, where 13:57:33
8 line to make sure it was the right line to do 13:55:07	8 a single-line change is developed -- 13:57:36
9 in the right place and insert it in the light 13:55:09	9 Q. Yes. 13:57:37
10 way. You know, if any of that activity on 13:55:12	10 A. -- for customer A and then 13:57:38
11 behalf of customer A is then conveyed via the 13:55:15	11 customer B comes along and needs that change 13:57:40
12 provision of that line of code, whether it's 13:55:23	12 and it is provided to customer B, you would 13:57:42
13 the line of code itself or a reduced testing 13:55:25	13 have to look to the allowable behavior first 13:57:45
14 time or -- or any other benefit that -- that 13:55:28	14 under the contract to determine what -- what 13:57:50
15 customer A received that wasn't -- customer B 13:55:33	15 the license permits a particular customer to 13:57:56
16 is now getting that benefit without having its 13:55:36	16 do. 13:57:59
17 own license been used to achieve that benefit. 13:55:40	17 And then you would have to look at 13:58:00
18 That's where the cross-use occurs. 13:55:45	18 the specific actions of the individual, in this 13:58:04
19 So you're not -- you're providing 13:55:48	19 case, your hypothetical software engineer. 13:58:09
20 something to a customer that was not created or 13:55:49	20 With respect to -- and you would 13:58:11
21 developed using their license. 13:55:53	21 also have to look at what was required in 13:58:16
22 And I think in that context, you 13:55:55	22 developing the fix. So, for instance, Did it 13:58:18
23 know, I -- I can't think of an example as I sit 13:55:58	23 need to be tested? Did you need to figure out 13:58:20
24 here that would not be cross-use. I mean, I -- 13:56:02	24 where to insert the line of code? All of the 13:58:22
25 there is maybe some remote corner case where 13:56:05	25 factors that I talked about before. And say, 13:58:24
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<p>1 okay, was -- was any of that used -- was any of 13:58:27</p> <p>2 that knowledge used directly -- this specific 13:58:31</p> <p>3 knowledge of this specific fix, not the general 13:58:37</p> <p>4 knowledge of how PeopleSoft is hung together, 13:58:39</p> <p>5 but the specific knowledge of a specific fix or 13:58:42</p> <p>6 update or change. Was that specific knowledge 13:58:44</p> <p>7 re-used for the benefit of the other customer? 13:58:47</p> <p>8 Q. Well, let me make it more -- 13:58:49</p> <p>9 A. And -- 13:58:51</p> <p>10 Q. Let me make it more concrete. 13:58:51</p> <p>11 The engineer wants to implement -- 13:58:55</p> <p>12 he knows that client A needs to implement this 13:58:58</p> <p>13 fix. He doesn't know what file it's going to 13:59:00</p> <p>14 go in at first. 13:59:03</p> <p>15 A. Okay. 13:59:04</p> <p>16 Q. So he goes into client A's 13:59:04</p> <p>17 environment, spends sometime and figures out, 13:59:07</p> <p>18 "Oh, it should go in this particular file, in" 13:59:10</p> <p>19 -- "in client A's environment." You would 13:59:13</p> <p>20 agree that's knowledge; right? He now knows 13:59:15</p> <p>21 where the fix should go? 13:59:18</p> <p>22 MR. POLITO: Objection, vague. 13:59:20</p> <p>23 A. Well, he has identified where the 13:59:22</p> <p>24 fix goes in one particular environment. 13:59:23</p> <p>25 Q. And then he implements that 13:59:25</p> <p style="text-align: right;">Page 174</p>	<p>1 Rimini 1 and the instruction I've given with 14:00:33</p> <p>2 respect to the interpretation of that ruling. 14:00:37</p> <p>3 Q. Well, let's -- 14:00:39</p> <p>4 A. And it's -- it's a licensing issue 14:00:40</p> <p>5 -- 14:00:40</p> <p>6 Q. Yeah. 14:00:40</p> <p>7 A. -- with respect to what Oracle 14:00:42</p> <p>8 permits. 14:00:43</p> <p>9 Q. You -- you've learned a lot about 14:00:44</p> <p>10 PeopleSoft in connection with your work on this 14:00:45</p> <p>11 case; right? 14:00:47</p> <p>12 A. A fair amount I think, yes. 14:00:49</p> <p>13 Q. Yeah. You reviewed a lot of code? 14:00:50</p> <p>14 A. Yes. 14:00:53</p> <p>15 Q. PeopleSoft code. 14:00:54</p> <p>16 If you got some subsequent 14:00:55</p> <p>17 engagement and you needed to analyze a 14:00:57</p> <p>18 particular function, and you knew from your 14:00:59</p> <p>19 prior work on this case exactly where it was, 14:01:02</p> <p>20 that's using your knowledge in this case for 14:01:04</p> <p>21 that subsequent case. Is that -- would that be 14:01:08</p> <p>22 cross-use? 14:01:10</p> <p>23 MR. POLITO: Objection, calls for 14:01:11</p> <p>24 a legal conclusion, outside the scope, 14:01:12</p> <p>25 incomplete hypothetical. 14:01:13</p> <p style="text-align: right;">Page 176</p>
<p>1 one-line fix. And six months later client B 13:59:26</p> <p>2 comes on the scene, and client B needs that 13:59:30</p> <p>3 same one-line fix. Can the same engineer go 13:59:33</p> <p>4 into client B's environment and add that one 13:59:39</p> <p>5 line already knowing the file that it needs to 13:59:42</p> <p>6 go into, or does that fall under cross-use as 13:59:45</p> <p>7 you applied in your analysis? 13:59:47</p> <p>8 MR. POLITO: Objection, incomplete 13:59:50</p> <p>9 hypothetical, vague, compound. 13:59:51</p> <p>10 A. Again, as I said before, counsel, 13:59:53</p> <p>11 it's a little more complex than just adding a 13:59:55</p> <p>12 line of code, because you have to know where to 13:59:57</p> <p>13 add that -- add the line of code. 14:00:00</p> <p>14 Q. Yeah. In my hypothetical, you 14:00:01</p> <p>15 learned where. 14:00:04</p> <p>16 A. And you have to know what that 14:00:04</p> <p>17 code is. So he learned on customer A's 14:00:05</p> <p>18 environment what program needed to be changed 14:00:07</p> <p>19 and where the change needed to go in the 14:00:09</p> <p>20 program and what specifically he needed to 14:00:12</p> <p>21 change. That was all work done under color of 14:00:14</p> <p>22 customer A's license. And then he goes to 14:00:18</p> <p>23 customer B and applies that same update. 14:00:23</p> <p>24 My understanding is that that 14:00:27</p> <p>25 would be prohibited under the ruling from 14:00:29</p> <p style="text-align: right;">Page 175</p>	<p>1 A. Before I did something like that, 14:01:15</p> <p>2 I would want to consult with counsel both about 14:01:17</p> <p>3 the terms of my protective order and -- and the 14:01:18</p> <p>4 terms of the -- the license on the system where 14:01:22</p> <p>5 I had learned that. I -- I don't know the 14:01:24</p> <p>6 answer to that, counsel, without, you know, 14:01:26</p> <p>7 actually committing the study that would be 14:01:29</p> <p>8 required to determine what was allowed. 14:01:31</p> <p>9 I would assume that I was not 14:01:33</p> <p>10 allowed to do that both under the terms of -- 14:01:34</p> <p>11 of the protective order and the terms of 14:01:37</p> <p>12 whatever license may have pertained with 14:01:41</p> <p>13 respect to the materials that were produced. 14:01:44</p> <p>14 You know, this is a little bit nonstandard. 14:01:46</p> <p>15 I'm not a licensee of Oracle. I've been given 14:01:48</p> <p>16 access to Oracle materials in the context of 14:01:51</p> <p>17 litigation. But I certainly wouldn't undertake 14:01:53</p> <p>18 that without speaking to counsel about whether 14:01:55</p> <p>19 I was even allowed to work on an Oracle 14:01:59</p> <p>20 PeopleSoft case or environment. 14:02:03</p> <p>21 Q. Can a Rimini engineer work on 14:02:06</p> <p>22 multiple clients without cross using? 14:02:08</p> <p>23 MR. POLITO: Objection, incomplete 14:02:12</p> <p>24 hypothetical, calls for speculation. 14:02:13</p> <p>25 A. I think the answer to that 14:02:17</p> <p style="text-align: right;">Page 177</p>

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1 MR. POLITO: Misstates prior 14:06:46	1 Would you agree? 14:08:54
2 testimony. 14:06:47	2 A. Oh, certainly, yes. You copied 14:08:55
3 A. I'm still not understanding your 14:06:49	3 the whole thing. 14:08:57
4 -- 14:06:49	4 Q. If you had a 17 syllable haiku in 14:08:58
5 Q. You said -- you said a blank line. 14:06:51	5 a 5,000 page book of haikus, and you copied 14:09:01
6 So are you comparing it - it's de minimis 14:06:53	6 that one, would that be de minimis or not? 14:09:05
7 relative to the file? It's de minimis relative 14:06:57	7 A. I do not think that would be de 14:09:07
8 to the module? It's de minimis relative to the 14:06:58	8 minimis -- 14:09:09
9 entire program? What is -- what are you 14:07:00	9 Q. Okay. 14:09:09
10 comparing it against? 14:07:03	10 A. -- if you copied the entire thing, 14:09:09
11 MR. POLITO: Objection, misstates 14:07:04	11 even if it was a 5,000 page book. 14:09:12
12 prior testimony, vague, compound. 14:07:05	12 Q. That's what I'm asking. So are 14:09:13
13 A. I am comparing -- in concluding 14:07:07	13 you saying it's not de minimis even relative to 14:09:16
14 that that line is de minimis, I am, first of 14:07:10	14 the entire registered copyrighted work? 14:09:19
15 all, looking at the amount of content that was 14:07:14	15 MR. POLITO: Objection, vague. 14:09:21
16 char- -- copied, the actual number of 14:07:16	16 A. I do not think that the -- that 14:09:22
17 characters or words, the size of the copying. 14:07:19	17 the entire registered copyright work, that's 14:09:25
18 So in both of these cases, I've postulated it's 14:07:21	18 not my understanding that that's the 14:09:28
19 a very small amount. 14:07:24	19 appropriate comparand. 14:09:34
20 I'm also considering the value. 14:07:25	20 [Reporter clarification.] 14:09:35
21 Is it a negligible value to the software that's 14:07:28	21 Q. Okay. 14:09:35
22 the recipient or not? And, you know, the sad 14:07:32	22 What's the appropriate comparand 14:09:35
23 fact with computer software is that almost any 14:07:36	23 in your view? 14:09:37
24 line if removed from a program, if it's an 14:07:39	24 A. Well, again, I think it's just an 14:09:38
25 actual line of code, will, in all likelihood, 14:07:42	25 assessment just directly with respect to what 14:09:39
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1 cause that program to fail in at least some 14:07:45	1 was copied. Is it trivial? Is it negligible? 14:09:42
2 instances, rendering the software less -- less 14:07:48	2 Does it -- does it attribute anything of value 14:09:47
3 reliable and, therefore, less valuable. 14:07:51	3 as the starting point? And then, you know, 14:09:52
4 So in -- in computer software 14:07:53	4 there is for practical reasons I think even 14:09:54
5 sense, even a single line of code is certainly 14:07:57	5 with code some lower boundary that you would 14:09:56
6 not negligible. Now, it may still be trivial, 14:07:59	6 need to apply. 14:09:59
7 as I say, if it's something that really has no 14:08:02	7 In order to be ultra conservative 14:10:01
8 functional operation and is extremely short, 14:08:05	8 in my report, I've really used a 20-percent 14:10:05
9 doesn't really embody any particular expressive 14:08:08	9 boundary, but often, that was hundreds of lines 14:10:07
10 creation as it exists. Then those are the 14:08:12	10 of similarity. And I -- you know, that we used 14:10:09
11 factors I look for in assessing trivial and 14:08:17	11 as a cutoff point in our -- in our de minimis 14:10:11
12 negligible. I don't look specifically to a 14:08:19	12 counts and the exhibits I prepared. But I 14:10:14
13 numeric quantum of X compared to Y or X over Y 14:08:23	13 actually think that's maybe an artificially 14:10:18
14 as you suggest it would be the -- perhaps the 14:08:28	14 high boundary. 14:10:20
15 -- 14:08:28	15 Q. Based on what? 14:10:22
16 Q. I'm not suggesting that you 14:08:31	16 A. Based on having looked at some of 14:10:24
17 provide a numeric quantum, at least at this 14:08:33	17 the stuff we actually excluded using that 14:10:25
18 point. But I'm asking, de minimis has to be 14:08:36	18 boundary. 14:10:28
19 relative to something. Would you agree? 14:08:39	19 Q. If Rimini runs a test in client 14:10:29
20 MR. POLITO: Objection, misstates 14:08:41	20 A's environment and then uses the knowledge it 14:10:33
21 prior testimony. 14:08:43	21 gains in order to avoid doing a similar test in 14:10:36
22 BY MR. VANDELDE: 14:08:43	22 client B's environment, is that cross-use under 14:10:39
23 Q. If you had a -- if you had a 17 14:08:44	23 your definition? 14:10:42
24 syllable haiku standing alone, if you copied 14:08:47	24 MR. POLITO: Objection, incomplete 14:10:43
25 all 17 syllables, that wouldn't be de minimis. 14:08:51	25 hypothetical. 14:10:44
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1 A. Runs a test in customer A's 14:10:45	1 they're freeing their resource to move on to 14:13:01
2 environment and uses the knowledge gained from 14:10:47	2 some other activity. 14:13:04
3 that test to avoid having to retest in customer 14:10:49	3 Q. So Rimini's knowledge that the 14:13:08
4 B's? That is cross-use of that first 14:10:52	4 test works is part of what informs your 14:13:09
5 customer's environment. They are using the 14:10:54	5 analysis that it's cross-use; Rimini benefits 14:13:15
6 knowledge resulting from that test to the 14:10:57	6 because they know the test works? 14:13:17
7 benefit of customer B by not having to spend 14:11:01	7 MR. POLITO: Objection, misstates 14:13:20
8 their CPU cycles or their -- you know, their 14:11:04	8 the prior testimony. 14:13:22
9 resource to do that test and not having to 14:11:06	9 A. That's not what I said. It's -- 14:13:22
10 incur the delay that -- whatever it was, that 14:11:08	10 it's Rimini's use of knowledge in a new 14:13:23
11 was associated with that testing. 14:11:11	11 environment, Rimini's reliance on the use made 14:13:25
12 Q. What if client B doesn't exist at 14:11:13	12 of customer A's environment for the testing and 14:13:30
13 the time? So engineer -- Rimini engineer goes 14:11:15	13 for the development of the fix. When that is 14:13:34
14 into client A's environment. It runs a test 14:11:17	14 just automatically propagated to another client 14:13:37
15 and gains some knowledge that the test worked 14:11:19	15 environment, Rimini is benefiting both from not 14:13:42
16 based on the update that they implemented. 14:11:22	16 having to redevelop the fix and not having to 14:13:47
17 Client B comes along six months later. They 14:11:24	17 retest the fix. 14:13:49
18 implement the same update and decide they don't 14:11:26	18 So it's not from their knowledge 14:13:50
19 need to run the test because they know it 14:11:29	19 of the fix, but it's from their ability to -- 14:13:51
20 works. Is that still cross-use even though at 14:11:31	20 to transfer and benefit from that knowledge 14:13:56
21 the time the -- the update was provided to 14:11:36	21 when they move to a second environment. 14:14:00
22 client A they didn't know that client B even 14:11:39	22 Q. What about this -- what about this 14:14:04
23 existed? 14:11:42	23 hypo? Ten clients need the same update. Ten 14:14:06
24 MR. POLITO: Hold on. 14:11:43	24 different engineers, independent Rimini 14:14:14
25 A. I would deem it to be so -- 14:11:44	25 engineers, independently implement that update, 14:14:15
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1 MR. POLITO: Sorry. Hold on one 14:11:46	1 no cross-use, according to your definition. A 14:14:17
2 second. 14:11:48	2 single Rima -- Rimini QA engineer goes into the 14:14:27
3 Objection, vague, incomplete 14:11:52	3 first of those ten that got the update and 14:14:30
4 hypothetical. 14:11:54	4 tests it and knows it works. Is it cross-use 14:14:33
5 MR. POLITO: Sorry. 14:11:54	5 if that QA engineer goes into client's B, C, D, 14:14:37
6 Please go ahead. 14:11:58	6 et cetera, and does shorter versions of tests 14:14:41
7 A. I would deem it to be so in the 14:11:59	7 because he knows that it worked for client A? 14:14:43
8 instance where their decision not to cast in 14:12:02	8 MR. POLITO: Objection, incomplete 14:14:45
9 the second environment was based on their use 14:12:09	9 hypothetical. 14:14:47
10 of that testing in the first environment. 14:12:11	10 A. There are some gaps there. Are 14:14:47
11 Q. What's the copy or reproduction or 14:12:14	11 we -- are the ten engineers supplying the same 14:14:49
12 derivative work in this example that 14:12:17	12 solution in -- let's use the PeopleSoft soft -- 14:14:52
13 constitutes cross-use? 14:12:19	13 environment, for example. 14:14:55
14 A. Well, you said you've moved the 14:12:22	14 Q. Yeah. 14:14:56
15 fix across. That's the -- the copy 14:12:24	15 A. Or one Oracle -- one of the Oracle 14:14:56
16 reproduction or derivative work. And the -- in 14:12:27	16 product environments. 14:14:58
17 your specific example. And the benefit is not 14:12:32	17 Q. Yeah, it's an Oracle environment. 14:14:59
18 only a fix, but also the benefit of the reduced 14:12:36	18 The ten implementations of that same update are 14:15:01
19 testing and anything that was -- whether it's 14:12:38	19 different, are not cross-use. They're used by 14:15:06
20 resource consumption or the reduced time delay 14:12:41	20 ten different engineers. Seems like they have 14:15:10
21 before the test is benefited. And, of course, 14:12:47	21 to be under your definition of cross-use. And 14:15:13
22 Rimini is also a clear beneficiary of the 14:12:49	22 now their testing needs to happen. So a QA 14:15:15
23 cross-use in this particular instance because 14:12:53	23 engineer goes into the first one and knows that 14:15:19
24 Rimini is not having to provide the personnel 14:12:55	24 it works in client A's environment. And now 14:15:21
25 and the time to do the second test. They're -- 14:12:57	25 the same QA engineer goes into client B. And 14:15:24
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<p>1 although it's slightly different, they know 14:15:29</p> <p>2 that they can run a shorter version of the 14:15:29</p> <p>3 test. Is that cross-use? 14:15:33</p> <p>4 MR. POLITO: Objection, vague -- 14:15:33</p> <p>5 Q. -- under your definition? 14:15:34</p> <p>6 MR. POLITO: I'm sorry, counsel. 14:15:35</p> <p>7 Incomplete hypothetical. 14:15:36</p> <p>8 A. As best I understand your 14:15:38</p> <p>9 hypothetical, counsel, where ten engineers have 14:15:39</p> <p>10 completely, independently applied ten different 14:15:44</p> <p>11 changes in ten different environments, I'm not 14:15:48</p> <p>12 sure how you get to the reuse of testing under 14:15:53</p> <p>13 your hypothetical. Because if they had done it 14:15:56</p> <p>14 completely independently, how would they be 14:15:59</p> <p>15 able to rely on the results from the 14:16:01</p> <p>16 other -- other test? You know, if they're 14:16:06</p> <p>17 applying exactly the same change -- 14:16:07</p> <p>18 Q. Yeah, I'm not saying they avoid 14:16:07</p> <p>19 it. I'm saying they can reduce -- 14:16:07</p> <p>20 A. -- and so somehow something has -- 14:16:10</p> <p>21 is coordinated -- 14:16:12</p> <p>22 Q. -- they can reduce -- 14:16:12</p> <p>23 A. -- so that they're doing the exact 14:16:12</p> <p>24 same change, then, yes, they're benefiting 14:16:15</p> <p>25 from the -- 14:16:16</p> <p style="text-align: right;">Page 190</p>	<p>1 MR. POLITO: Objection, asked -- 14:17:09</p> <p>2 Q. -- without cross-using under your 14:17:10</p> <p>3 definition? 14:17:13</p> <p>4 MR. POLITO: Objection, asked and 14:17:13</p> <p>5 answered, incomplete hypothetical. 14:17:14</p> <p>6 A. Again, counsel, with my 14:17:19</p> <p>7 understanding of the definition of cross-use, 14:17:21</p> <p>8 it depends exactly on what they do. There's 14:17:23</p> <p>9 not a blanket yes or no answer. It would 14:17:28</p> <p>10 depend exactly on what they do. Do they reuse 14:17:32</p> <p>11 any component of the work done on customer A's 14:17:37</p> <p>12 environment for the benefit of customer B? 14:17:40</p> <p>13 Then my understanding of what's been prohibited 14:17:43</p> <p>14 under cross-use is that that would be 14:17:46</p> <p>15 disallowed. If somehow they were able to do 14:17:48</p> <p>16 that, you know, the individual was able to do 14:17:52</p> <p>17 that without any reference to anything that was 14:17:55</p> <p>18 done on behalf of customer A, without any 14:17:59</p> <p>19 benefit or shortening of testing or, you know, 14:18:02</p> <p>20 basically followed what the license requires, 14:18:05</p> <p>21 do the change from scratch on customer B 14:18:07</p> <p>22 somehow without -- without referencing anything 14:18:10</p> <p>23 they had done on A, it may well be. One would 14:18:12</p> <p>24 look to the license term. 14:18:15</p> <p>25 BY MR. VANDEVELDE: 14:18:15</p> <p style="text-align: right;">Page 192</p>
<p>1 Q. Okay. 14:16:16</p> <p>2 [Cross-talk. Simultaneous talking 14:16:16</p> <p>3 by counsel and the witness.] 14:16:16</p> <p>4 A. -- the testing because they know 14:16:18</p> <p>5 that that exact same change works or that -- 14:16:18</p> <p>6 that that solution works. 14:16:21</p> <p>7 Q. Or the similar change works? 14:16:21</p> <p>8 A. That's -- yeah, that solution 14:16:23</p> <p>9 works. And they don't have to test A, B, C and 14:16:24</p> <p>10 D because somehow they can infer that. I would 14:16:27</p> <p>11 be uncomfortable with that scenario as a 14:16:30</p> <p>12 customer myself, but -- but if the hypothesis 14:16:32</p> <p>13 is that they do that, and they don't have to 14:16:36</p> <p>14 redo the testing, that's a benefit to Rimini. 14:16:38</p> <p>15 THE COURT REPORTER: By the way, 14:16:46</p> <p>16 when there's cross-talk, I'm writing her 14:16:47</p> <p>17 answer down. 14:16:49</p> <p>18 MR. VANDEVELDE: Yeah, that's 14:16:50</p> <p>19 fine. 14:16:50</p> <p>20 Q. So let's say two clients -- put 14:16:51</p> <p>21 aside testing for a second and go back to just 14:16:53</p> <p>22 the -- the development of updates. If two 14:16:56</p> <p>23 clients need the exact same update, can the 14:16:58</p> <p>24 same Rimini engineer provide it for those two 14:17:04</p> <p>25 clients -- 14:17:08</p> <p style="text-align: right;">Page 191</p>	<p>1 Q. Or -- or can they reuse their 14:18:17</p> <p>2 knowledge, though, from the solution they 14:18:19</p> <p>3 provide for client A? 14:18:21</p> <p>4 MR. POLITO: Objection, vague, 14:18:23</p> <p>5 asked and answered, incomplete 14:18:24</p> <p>6 hypothetical. 14:18:25</p> <p>7 A. Again, I think we did cover this 14:18:27</p> <p>8 earlier, but it depends on specifically what 14:18:29</p> <p>9 the knowledge is and how they're using it. 14:18:32</p> <p>10 Q. And I think you said earlier, if 14:18:36</p> <p>11 you -- if you gain knowledge about where to 14:18:37</p> <p>12 implement the fix, what the fix should be, 14:18:40</p> <p>13 right, how it fits into the context, then you 14:18:45</p> <p>14 used that knowledge for client B, then that 14:18:48</p> <p>15 would be cross-use under your definition? 14:18:50</p> <p>16 A. If you develop the knowledge of 14:18:52</p> <p>17 where, what and when on customer A -- let's -- 14:18:54</p> <p>18 let's use a hypothetical here. It takes me a 14:18:57</p> <p>19 week to figure out exactly what needs to be 14:19:01</p> <p>20 changed because I have to research the bug. I 14:19:03</p> <p>21 have to figure out what the bug is. I have to 14:19:05</p> <p>22 figure out what program the bug is. I have to 14:19:08</p> <p>23 study the program and how it operates. And I 14:19:11</p> <p>24 have to say, "Ah, I can fix this with a single 14:19:13</p> <p>25 line. Lucky me. I can do that just by making 14:19:17</p> <p style="text-align: right;">Page 193</p>

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1 this one little tweak right here." You know, 14:19:20	1 would be cross-use if that same engineer solved 14:21:25
2 I -- that -- when you say one line, you're kind 14:19:23	2 that same problem for those other customers? 14:21:28
3 of assuming that that's just something that's 14:19:26	3 MR. POLITO: Objection, incomplete 14:21:31
4 really a quick instantaneous, "I can do that." 14:19:30	4 hypothetical. 14:21:32
5 But that's not the way code really works in the 14:19:34	5 A. Assuming that their solution of 14:21:33
6 real world. 14:19:37	6 that problem relied on the use of the first 14:21:36
7 So now I go to customer B, and 14:19:39	7 customer's environment, that is -- is my 14:21:39
8 they're having the same problem. And I want to 14:19:41	8 understanding. You know, if their solution 14:21:43
9 help them out. And I go, "Oh, I know exactly 14:19:45	9 didn't rely on the use of the first customer's 14:21:46
10 what I did on customer A. I remember, you 14:19:48	10 environment, we would have a different 14:21:48
11 know, I did all that testing to make sure my 14:19:52	11 hypothetical. 14:21:50
12 fix was going to fix everything and wasn't 14:19:54	12 Q. Turn to paragraph 222 for a 14:22:11
13 going to break anything after I applied it." 14:19:56	13 second. 14:22:13
14 So, you know, maybe I spent two entire weeks on 14:19:58	14 It says: 14:22:24
15 customer A just making sure this is the right 14:20:01	15 [REDACTED]
16 fix. Now I go to customer B, and I just go, 14:20:03	16 [REDACTED]
17 "Oh, I know what that was. I remember exactly. 14:20:06	17 [REDACTED]
18 I remember the exact line. I remember the 14:20:08	18 [REDACTED]
19 exact place in the code it needs to go. I 14:20:09	19 [REDACTED]
20 remember the exact way I need to insert it. 14:20:12	20 [REDACTED]
21 And I don't even need to test it because this 14:20:14	21 [REDACTED]
22 is" -- "this is the same thing." 14:20:17	22 [REDACTED]
23 Then you're benefiting from that. 14:20:17	23 [REDACTED]
24 You're benefiting from the work done on 14:20:20	24 [REDACTED]
25 customer A's license over those few weeks when 14:20:22	25 So what if -- I think we covered 14:22:53
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1 you take that change to customer B. 14:20:25	1 this in a slightly different context. But what 14:22:57
2 Now, maybe instead your engineer 14:20:27	2 if the subsequent customer, client B, doesn't 14:23:00
3 goes to customer B's environment, and they go, 14:20:30	3 exist yet? Would you -- would this not be 14:23:04
4 "I kind of remember I changed something, and 14:20:33	4 cross-use because there could not -- the 14:23:08
5 I'm going to totally figure it out from 14:20:35	5 engineer could not have formed an intent to 14:23:10
6 scratch. I'm not even sure this environment is 14:20:37	6 cross-use since they didn't know about client 14:23:12
7 identical. So I've really got to do some work 14:20:39	7 B? 14:23:14
8 here and figure this out." 14:20:41	8 MR. POLITO: Objection, asked and 14:23:15
9 In the second scenario, where 14:20:43	9 answered. Object to the extent it calls 14:23:16
10 there's no reuse of the knowledge on -- on -- 14:20:45	10 for a legal conclusion. 14:23:18
11 from customer A, or you're only using your 14:20:46	11 [REDACTED]
12 high-level generalized knowledge of the 14:20:49	12 [REDACTED]
13 PeopleSoft, you know, product suite. And this 14:20:52	13 [REDACTED]
14 is an HRMS product, so I'm going to look in the 14:20:54	14 [REDACTED]
15 HRMS library, you know, at a very high level. 14:20:58	15 [REDACTED]
16 Then you're -- you know, there may be 14:20:59	16 [REDACTED]
17 hypothetically be a way that he can do that 14:21:01	17 [REDACTED]
18 without cross-use. 14:21:04	18 [REDACTED]
19 Q. But in your -- the initial part of 14:21:05	19 [REDACTED]
20 your answer, you talked about someone who did a 14:21:07	20 [REDACTED]
21 lot of work and figured it out, and, you know, 14:21:09	21 [REDACTED]
22 figured out what to write and tested it and 14:21:11	22 that your scenario is a hypothetical 14:23:55
23 knows it works. So in your opinion, any 14:21:13	23 completely, you know, I can -- I can try to 14:23:58
24 customer who would benefit from that experience 14:21:17	24 apply a construction of what -- what my 14:24:00
25 and knowledge gained from that engineer, that 14:21:21	25 understanding would be in that scene. 14:24:02
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1 THE WITNESS: Do you mind if we 14:32:54	1 not use the -- the work done under customer A's 14:56:06
2 take a short break at sometime soon, 14:33:05	2 license when doing the fix for customer B. 14:56:17
3 counsel? 14:33:07	3 Now, what that would entail, you know, in a 14:56:20
4 MR. VANDELDE: Sure. Yeah. 14:33:07	4 specific instance would have to be determined 14:56:23
5 THE VIDEOGRAPHER: This marks the 14:33:11	5 on an instance by instance basis. 14:56:24
6 end of media number 3. We're going off 14:33:12	6 Q. So in my hypo, it's the -- there's 14:56:27
7 the record at 2:33 p.m. 14:33:14	7 only one engineer at the company -- 14:56:28
8 [Recess at 2:33 p.m.] 14:33:16	8 A. Uh-huh. 14:56:28
9 [Resuming at 2:54 p.m.] 14:41:29	9 Q. -- and they identify the problem 14:56:30
10 THE VIDEOGRAPHER: We're back on 14:54:05	10 in client A's environment. They learned where 14:56:33
11 the record at 2:54 p.m., and this marks 14:54:15	11 it is. They learned how to fix it. They 14:56:36
12 the beginning of media number 4 in the 14:54:17	12 learned what the solution is like. It took two 14:56:38
13 deposition of Barbara Frederiksen-Cross. 14:54:19	13 weeks to do. And now client B is the exact 14:56:42
14 EXAMINATION CONTINUING 14:54:19	14 same issue. The engineer knew that. And can 14:56:45
15 BY MR. VANDELDE: 14:54:19	15 you think of a way, given that the engineer has 14:56:50
16 Q. Do you understand you're still 14:54:23	16 acquired that knowledge -- I think you called 14:56:54
17 under oath? 14:54:24	17 it the what, where and how of how to fix the 14:56:56
18 A. I do, sir. 14:54:25	18 problem to client A's environment. Can that 14:57:01
19 Q. Let's do another hypothetical. 14:54:27	19 engineer implement that fix in client B's 14:57:03
20 Two clients of Rimini need the same update, and 14:54:32	20 environment without cross-using, as you defined 14:57:06
21 there's one engineer. Rimini only has one 14:54:35	21 that term? 14:57:10
22 engineer. And the engineer goes into client 14:54:40	22 MR. POLITO: Objection, vague, 14:57:10
23 A's environment, spends two weeks to solve the 14:54:43	23 asked and answered, incomplete 14:57:12
24 problem. He learns where the problem is. He 14:54:45	24 hypothetical, compound, beyond the 14:57:13
25 learns how to fix it. He learns what the 14:54:48	25 scope. 14:57:18
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1 solution is. How does that engineer implement 14:54:50	1 A. And my answer would be, again, 14:57:21
2 the same fix to client B's environment without 14:54:55	2 because any fix is going to be somewhat 14:57:23
3 cross-using as you apply the definition? 14:55:02	3 situationally dependent, is to examine, you 14:57:26
4 MR. POLITO: Object to the form, 14:55:05	4 know, the behaviors that have specifically been 14:57:31
5 vague, incomplete hypothetical. 14:55:06	5 prohibited, the use of customer A's environment 14:57:34
6 A. I have really not tried to assess 14:55:11	6 for the benefit of customer B or on behalf of 14:57:38
7 how Rimini can or should set up its business 14:55:14	7 the -- the update rolled out to customer B, and 14:57:42
8 model. That's been outside the remit of what 14:55:18	8 to figure out how to do that, you know, whether 14:57:46
9 I've been asked to do, counsel. I -- in the 14:55:20	9 it was to completely develop that update from 14:57:48
10 scenario you propose, what I would suggest is 14:55:26	10 scratch, you know, not use the identical 14:57:52
11 that the engineer talk to Rimini's counsel 14:55:29	11 solution. 14:57:54
12 and -- and, you know, that they examine the 14:55:32	12 Q. How does the engineer forget what 14:57:57
13 licenses and figure out what they need to do to 14:55:34	13 he's learned about the what, when and where of 14:57:59
14 stay in compliance with the license. I -- I 14:55:37	14 the issue in client A's environment? 14:58:01
15 haven't been asked to figure out what that 14:55:40	15 MR. POLITO: Objection, outside 14:58:04
16 would be, and I'm -- I'm not prepared to try to 14:55:42	16 the scope, calls for speculation. 14:58:05
17 think of a scenario as I sit here. I just 14:55:44	17 A. Honestly, counsel, you know, I -- 14:58:09
18 don't have an answer to that question. 14:55:46	18 that's outside the scope of what I -- I 14:58:11
19 Q. So can you think of a way that 14:55:49	19 undertook to try to understand. I took my 14:58:15
20 they -- that engineer could implement the fix 14:55:51	20 understanding of what cross-use was prohibited 14:58:17
21 in client B's environment without cross-using, 14:55:56	21 and applied to that -- 14:58:21
22 as you defined that term? 14:55:59	22 Q. I'm asking you to apply that 14:58:22
23 MR. POLITO: Same objections, 14:56:01	23 definition to my hypothetical. 14:58:23
24 asked and answered. 14:56:02	24 MR. POLITO: 14:58:24
25 A. Well, the first step would be to 14:56:04	25 Ms. Frederiksen-Cross, had you completed 14:58:24
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1 your answer before counsel interrupted? 14:58:26	1 experience about where the issue is, how to fix 15:00:25
2 THE WITNESS: I was close to the 14:58:29	2 it. How does that engineer forget what he or 15:00:28
3 end of my answer. 14:58:30	3 she has learned when they need to go or want to 15:00:31
4 A. I was just saying that I had 14:58:30	4 go implement it in client B's environment? 15:00:34
5 applied my understanding of cross-use as best I 14:58:32	5 MR. POLITO: Same objections. 15:00:36
6 could in my analysis with respect to the actual 14:58:36	6 A. Counsel, you know, I've -- I've 15:00:41
7 situations and the actual evidence that I was 14:58:41	7 given you the best answer I can to this 15:00:41
8 provided. That was not a situation that I saw, 14:58:44	8 question. I think you've asked it three or 15:00:44
9 as you describe it -- 14:58:50	9 four times now, and, you now, the issue that is 15:00:46
10 Q. I'm asking you to apply the 14:58:52	10 a stumbling block I believe for both of us is 15:00:51
11 definition you've applied throughout your 14:58:54	11 the -- my understanding that the cross-use as 15:00:55
12 report for cross-use to my hypothetical. 14:58:56	12 prohibited in this specific instance of these 15:01:00
13 A. I -- 14:58:59	13 specific parties in the color and context of 15:01:03
14 MR. POLITO: Same objections. 14:58:59	14 the specific litigations that have gone before 15:01:06
15 A. But with all due respect, counsel, 14:59:04	15 creates a standard that -- that, as I 15:01:13
16 the best answer I can give you is look at what 14:59:06	16 understand it, prohibits Rimini from reusing 15:01:14
17 the license limits, look at what the court has 14:59:08	17 the solution that was developed for one 15:01:20
18 limit, and don't do the limited things. 14:59:13	18 customer, using the license of that customer in 15:01:25
19 Q. You have a definition of cross-use 14:59:15	19 another customer's environment. 15:01:31
20 in your report. We looked at them, right, 14:59:16	20 And -- and the only thing that I 15:01:33
21 paragraphs 22 through 24? You said you applied 14:59:18	21 can -- the only answer I have is that they have 15:01:34
22 them throughout your report; is that correct? 14:59:20	22 to look to what the license permits. And, you 15:01:37
23 A. Yes. You're not asking me about 14:59:23	23 know, it is to follow the -- the guidance of 15:01:41
24 something I did in my report, though. I didn't 14:59:24	24 that license and the court's guidance. And 15:01:44
25 try to construct a business model for Rimini in 14:59:26	25 that would be, for instance, to develop a fix 15:01:46
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1 my report. 14:59:29	1 from scratch in the second customer's 15:01:51
2 Q. I'm not asking you to construct a 14:59:29	2 environment without reference to the solution 15:01:54
3 business model. I'm asking what I think is a 14:59:31	3 that had been used before. 15:01:57
4 fairly simple hypothetical. Ask me if you need 14:59:33	4 Q. But what about -- 15:02:00
5 any clarifying information. 14:59:36	5 A. And how the engineer would do 15:02:01
6 An engineer acquires that 14:59:38	6 that, I don't know, counsel. You know, I think 15:02:02
7 knowledge about where the problem is, how to 14:59:42	7 that would be a -- a question -- if I were a 15:02:04
8 fix it, spends quite a bit of time, two weeks, 14:59:44	8 software engineer and I was aware of this 15:02:07
9 in doing so in client A's environment, figures 14:59:48	9 litigation and I was aware of the limitations 15:02:09
10 how to develop and implement the fix, tests it. 14:59:52	10 of the license and I was aware of the court's 15:02:12
11 Client B also needs that fix. How under your 14:59:53	11 instruction with respect to cross-use, my 15:02:14
12 definition of cross-use can that engineer 14:59:57	12 solution would be to go and confer with counsel 15:02:18
13 implement that fix in client B's environment -- 15:00:01	13 and find out what the legal answer is. I'm not 15:02:20
14 MR. POLITO: Asked and answered -- 15:00:03	14 a lawyer, and I can't presume to tell you what 15:02:23
15 BY MR. VANDEVELDE: 15:00:03	15 the legal answer is. 15:02:26
16 Q. -- without, as you define, it 15:00:06	16 Q. I'm just asking you to apply your 15:02:27
17 cross-using? 15:00:07	17 definition. Can you think of a way that that 15:02:29
18 MR. POLITO: Asked and answered, 15:00:08	18 engineer, who has acquired all that knowledge 15:02:31
19 outside the scope, incomplete 15:00:09	19 about where the issue is, how to fix it, what 15:02:32
20 hypothetical, compound, vague. 15:00:10	20 to do, that the testing has worked, can you 15:02:35
21 A. By reimplementing the fix in a way 15:00:13	21 think of a way for that engineer to implement 15:02:38
22 that does not reuse the work from customer A's 15:00:15	22 that same fix in client B's environment -- 15:02:41
23 environment. 15:00:18	23 MR. POLITO: Same -- 15:02:41
24 Q. What if -- but in my hypothetical, 15:00:19	24 Q. -- without cross-using as you 15:02:44
25 the engineer has acquired knowledge and 15:00:23	25 define it? 15:02:46
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1	MR. POLITO: Same objections.	15:02:47	1	client B has the exact same issue in their	15:04:56
2	A. Again, you know, counsel, coming	15:02:52	2	file. That one character needs to be changed.	15:04:58
3	back to the prohibition on the use of one	15:02:56	3	A. Uh-huh.	15:05:03
4	customer's licensed environment for the benefit	15:02:58	4	Q. How under your definition of	15:05:04
5	of another customer, I would say the only way	15:03:00	5	cross-use can that engineer implement that same	15:05:07
6	that I can hypothesize is to find a way to	15:03:04	6	fix in client B's environment without	15:05:10
7	recreate -- or not to recreate, but to create a	15:03:06	7	cross-using?	15:05:13
8	from scratch that fix in the new environment.	15:03:09	8	MR. POLITO:	15:05:13
9	So create a new fix, create a new test plan, to	15:03:13	9	Ms. Frederiksen-Cross, before counsel	15:05:13
10	do it the way the license requires. One	15:03:17	10	interrupted to strike your answer that	15:05:15
11	customer, one environment.	15:03:19	11	you had not completed, had you completed	15:05:17
12	And what would be specifically	15:03:26	12	your answer to his prior question?	15:05:18
13	required in a specific instance is something I	15:03:29	13	THE WITNESS: No.	15:05:21
14	can't tell you without more details in the	15:03:30	14	A. I just wanted to say you've asked	15:05:21
15	hypothetical.	15:03:32	15	me the same question over and over. I've given	15:05:23
16	Q. How can that engineer recreate the	15:03:35	16	you the best answer I have to that question, is	15:05:25
17	fix from scratch without using the knowledge in	15:03:44	17	that that -- that's a legal question. I'm not	15:05:28
18	their brain gained from the work performed in	15:03:47	18	a lawyer. That engineer would have to consult	15:05:30
19	client A's environment?	15:03:50	19	with Rimini's counsel to understand what	15:05:34
20	MR. POLITO: Objection, calls for	15:03:52	20	actions were permissible and what were not.	15:05:37
21	speculation, outside the scope, asked	15:03:52	21	And counsel I'm sure would tell them, you know,	15:05:39
22	and answered, incomplete hypothetical,	15:03:54	22	what -- how to go about that or at least, you	15:05:41
23	vague.	15:03:56	23	know, what the parameters of what they couldn't	15:05:43
			24	do are. I'm -- I'm not counsel for Rimini.	15:05:45
			25	I'm not a lawyer. I've given you the best	15:05:49
			Page 216		

2	Q. You said --	15:04:05	1	answer I can.	15:05:52
3	MR. VANDELDE: I'm going to move	15:04:08	2	BY MR. VANDELDE:	15:05:52
4	to strike as -- it's nonresponsive.	15:04:08	3	Q. I'm not asking you to render legal	15:05:53
5	A. Well --	15:04:09	4	conclusions. You've applied your definition of	15:05:55
6	MR. VANDELDE: It's	15:04:10	5	cross-use to all sorts of conduct, haven't you?	15:05:58
7	nonresponsive.	15:04:11	6	A. I certainly have --	15:06:02
8	BY MR. VANDELDE:	15:04:11	7	Q. All right.	15:06:03
9	Q. I'm asking you to answer my	15:04:11	8	A. -- with respect to conduct I	15:06:04
10	question. Let me get more concrete.	15:04:13	9	actually observed.	15:06:05
11	A. I'm giving you the best answer I	15:04:14	10	Q. I'm asking you to do the	15:06:06
12	can counsel.	15:04:16	11	hypothetical. Are you refusing to answer the	15:06:07
13	Q. No, no. Let me finish my	15:04:16	12	hypothetical?	15:06:09
14	question. You're asking -- you're not	15:04:17	13	MR. POLITO: Objection, misstates	15:06:10
15	responding to my questions.	15:04:18	14	testimony, asked and answered,	15:06:10
16	If the issue in client A's	15:04:21	15	incomplete hypothetical, outside the	15:06:11
17	environment is that they notice a problem where	15:04:24	16	scope, calls for a legal conclusion.	15:06:13
18	a test, a conditional test is wrong, and they	15:04:27	17	A. Counsel, my understanding that the	15:06:17
19	-- instead of a 1, it should be a zero, that's	15:04:32	18	prohibited -- prohibition and the	15:06:19
20	the fix. It's that simple. But it took	15:04:36	19	characterization of what constitutes cross-use	15:06:24
21	sometime for the engineer to find the issue, to	15:04:39	20	was provided by the court and -- and framed by	15:06:27
22	figure it out, to realize that that 1 needed to	15:04:43	21	Rimini's licenses -- or by -- I'm sorry, by the	15:06:34
23	be changed to a zero, took two weeks, let's	15:04:47	22	customer's licenses. And you are now asking	15:06:36
24	say. And then they tested it. Engineer gained	15:04:51	23	me: How could somebody do something and not	15:06:39
25	the knowledge that the testing worked. Now,	15:04:54	24	fall afoul of those guidelines? And I'm	15:06:43
			25	telling you that's a legal decision, and I'm	15:06:45
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			Page 215		

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1 not a lawyer. 15:06:48	1 Q. That's why it's called a 15:08:09
2 Q. But you're doing it with other -- 15:06:48	2 hypothetical. I'm asking you to answer it. 15:08:10
3 with respect to other conduct. You've just 15:06:50	3 A. And you're asking me to render 15:08:12
4 said you were. You've applied your definition 15:06:52	4 what to me is it a legal opinion about what -- 15:08:15
5 of -- of cross-use. Whether you got it from 15:06:54	5 how Rimini could do something. And I have not 15:08:16
6 the court or from counsel or whatever it is, 15:06:56	6 evaluated that situation. I'm not going to 15:08:18
7 you are applying that definition to all sorts 15:06:57	7 make up a legal opinion when I'm not a lawyer 15:08:20
8 of conduct that you claim to have analyzed in 15:06:59	8 sitting in the spot in a deposition. I 15:08:22
9 this case. I'm asking you to do it to my 15:07:02	9 think -- 15:08:25
10 hypothetical. 15:07:04	10 Q. You've applied your definition -- 15:08:25
11 MR. POLITO: Is there a question 15:07:05	11 you've testified under oath that you've applied 15:08:28
12 pending? 15:07:07	12 your definition to other conduct. I'm asking 15:08:30
13 MR. VANDEVELDE: Yes. 15:07:08	13 you to apply your definition to the 15:08:32
14 MR. POLITO: What's the question, 15:07:09	14 hypothetical conduct that I have laid out for 15:08:33
15 counsel? 15:07:10	15 you. If you need more information, ask me, but 15:08:35
16 BY MR. VANDEVELDE: 15:07:10	16 you're required to answer the hypothetical. 15:08:38
17 Q. How -- is there a way for that 15:07:11	17 MR. POLITO: Is there a question 15:08:39
18 engineer to implement that same fix that 15:07:13	18 pending, counsel? 15:08:41
19 requires changing one code -- or sorry, one 15:07:15	19 MR. VANDEVELDE: I've asked it 15:08:43
20 character in client B's environment to 15:07:18	20 multiple times. 15:08:44
21 implement that without cross-using as you've 15:07:20	21 A. My point -- 15:08:46
22 defined and applied throughout your report? 15:07:23	22 Q. How can that engineer implement 15:08:52
23 MR. POLITO: Objection, incomplete 15:07:25	23 the fix in client B's environment without 15:08:53
24 hypothetical, outside the scope, vague. 15:07:26	24 constituting cross-use as you have defined and 15:08:58
25 Object to the extent it calls for a 15:07:30	25 used it throughout your report? 15:09:01
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1 legal conclusion. 15:07:32	1 MR. POLITO: Objection -- I'm 15:09:04
2 A. I think I understand where we 15:07:35	2 sorry, objection, incomplete 15:09:07
3 [REDACTED] [REDACTED]	3 hypothetical, asked and answered, calls 15:09:09
4 [REDACTED] [REDACTED]	4 for a legal conclusion, outside the 15:09:10
5 [REDACTED] [REDACTED]	5 scope. 15:09:12
6 MR. VANDEVELDE: Move to strike as 15:07:44	6 A. My best answer to you, counsel, is 15:09:15
7 nonresponsive. 15:07:45	7 that they could create the fix for customer B 15:09:17
8 A. No. Listen to me. 15:07:45	8 without reference to their use of customer A's 15:09:24
9 MR. VANDEVELDE: Move to strike as 15:07:46	9 environment. 15:09:27
10 nonresponsive. 15:07:47	10 Q. It's in the engineer's head. He 15:09:28
11 BY MR. VANDEVELDE: 15:07:48	11 knows the knowledge from all the work he did in 15:09:30
12 Q. Are you refusing to answer my 15:07:48	12 client A's environment. How can he do that 15:09:33
13 hypothetical, yes or no? 15:07:50	13 without reference to that knowledge in his 15:09:36
14 MR. POLITO: 15:07:51	14 brain? 15:09:38
15 Ms. Frederiksen-Cross, before counsel 15:07:51	15 MR. POLITO: Objection, calls for 15:09:39
16 moved to strike an answer that you 15:07:53	16 speculation, outside the scope, 15:09:40
17 hadn't completed, had you finished that 15:07:54	17 incomplete hypothetical, asked and 15:09:41
18 answer? 15:07:56	18 answered. 15:09:42
19 A. I think I've answered this 15:07:57	19 A. With respect, for instance, to 15:09:44
20 hypothetical with my best answer four or five 15:07:58	20 testing, counsel, he could test thoroughly in 15:09:45
21 times now, and I'm trying to explain to you 15:08:01	21 customer B's environment using fresh test data 15:09:51
22 that your hypothetical doesn't match the facts 15:08:03	22 and a fresh test plan. With respect to how he 15:09:57
23 of this case. It's not the cross-use that I -- 15:08:05	23 implements the code, even for something as 15:10:00
24 the way that I applied cross-use. 15:08:07	24 simple as the hypothetical that you have 15:10:02
25 BY MR. VANDEVELDE: 15:08:09	25 posited, there are many different ways that one 15:10:04
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<p>1 takes one day or two days. But it's shorter. 15:19:21</p> <p>2 Is that cross-use because he 15:19:25</p> <p>3 relied on the specific knowledge and experience 15:19:27</p> <p>4 he gained in solving that same problem in 15:19:29</p> <p>5 company A's environment? 15:19:31</p> <p>6 MR. POLITO: Same objections. 15:19:32</p> <p>7 A. And he's applying the exact same 15:19:36</p> <p>8 update that he applied in company A's 15:19:38</p> <p>9 environment? 15:19:41</p> <p>10 Q. He's not copying it. He remembers 15:19:41</p> <p>11 how he did it. He retypes it. 15:19:43</p> <p>12 A. That's still copying it. I mean, 15:19:44</p> <p>13 just because he's copying it from memory as 15:19:46</p> <p>14 opposed to copying it from a sheet of paper or 15:19:48</p> <p>15 copying it looking at a screen, that's still 15:19:50</p> <p>16 copying. 15:19:53</p> <p>17 Q. Does -- does it matter if it's 15:19:53</p> <p>18 different? 15:19:54</p> <p>19 MR. POLITO: Objection. I'm 15:19:54</p> <p>20 sorry. 15:19:55</p> <p>21 A. If I memorize a poem -- sorry. 15:19:55</p> <p>22 MR. POLITO: Objection, calls for 15:19:57</p> <p>23 a legal conclusion, vague. 15:19:59</p> <p>24 BY MR. VANDEVELDE: 15:19:59</p> <p>25 Q. Does it matter if it's identically 15:20:00</p> <p style="text-align: right;">Page 230</p>	<p>1 environment in another customer's environment, 15:21:24</p> <p>2 absent any differences in the license or in any 15:21:27</p> <p>3 of the other things that -- that come into play 15:21:32</p> <p>4 here, I -- I just -- I don't think he can do it 15:21:34</p> <p>5 that way. He has to find a different way to do 15:21:38</p> <p>6 it. 15:21:40</p> <p>7 Q. What if -- what if the engineer at 15:21:41</p> <p>8 company A, over the course of years, he solves 15:21:45</p> <p>9 hundreds and hundreds of issues, acquires a 15:21:48</p> <p>10 wealth of knowledge about specific problems and 15:21:50</p> <p>11 specific ways of solving them? And he switches 15:21:53</p> <p>12 jobs and goes to company B, and company B has 15:21:57</p> <p>13 an issue. And it's not identical to the 15:22:02</p> <p>14 hundreds of the issues he solved at company A, 15:22:05</p> <p>15 but there is experience and knowledge he is 15:22:08</p> <p>16 leveraging about those specific solutions that 15:22:09</p> <p>17 he had developed at a prior employer. 15:22:12</p> <p>18 Can he leverage all that knowledge 15:22:15</p> <p>19 and experience about specific problems, 15:22:17</p> <p>20 specific solutions in crafting a fix for the 15:22:20</p> <p>21 issue that company B is experiencing? 15:22:26</p> <p>22 MR. POLITO: Objection, compound, 15:22:28</p> <p>23 vague as to the undefined terms 15:22:31</p> <p>24 "knowledge" and "experience," incomplete 15:22:33</p> <p>25 hypothetical. 15:22:36</p> <p style="text-align: right;">Page 232</p>
<p>1 retyped or if he changes the specific way in 15:20:03</p> <p>2 which he implements the fix that's needed in 15:20:06</p> <p>3 company B's environment? 15:20:08</p> <p>4 A. I think it does, counsel. If I 15:20:10</p> <p>5 memorize a literary work and try to present it 15:20:13</p> <p>6 as my own work, that's a wrongness. 15:20:16</p> <p>7 Q. But what if it still takes him two 15:20:21</p> <p>8 days instead of two weeks? He may implement it 15:20:22</p> <p>9 differently, but he still saved a lot of time. 15:20:25</p> <p>10 MR. POLITO: Objection, incomplete 15:20:27</p> <p>11 hypothetical, vague. 15:20:29</p> <p>12 A. I don't think the issue is the 15:20:42</p> <p>13 savings of time, counsel, so much as whether 15:20:44</p> <p>14 the same fix and the same testing that he did 15:20:48</p> <p>15 under the license of one customer is then 15:20:56</p> <p>16 provided to the other customer. That's my 15:21:01</p> <p>17 understanding of where he crosses the line. 15:21:03</p> <p>18 And -- 15:21:06</p> <p>19 Q. Provided because he remembered the 15:21:07</p> <p>20 solution? 15:21:08</p> <p>21 MR. POLITO: Objection, vague. 15:21:10</p> <p>22 A. I -- as I've said, I don't think 15:21:12</p> <p>23 it matters how he got possession of the same 15:21:14</p> <p>24 fix. If he is applying the same fix that he 15:21:17</p> <p>25 developed based on the use of one customer's 15:21:21</p> <p style="text-align: right;">Page 231</p>	<p>1 A. Again, I keep coming back to this, 15:22:39</p> <p>2 but I feel like somehow we're talking past each 15:22:42</p> <p>3 other. 15:22:45</p> <p>4 It depends on exactly what that 15:22:46</p> <p>5 knowledge is and how he leverages it in 15:22:48</p> <p>6 applying the fix. 15:22:53</p> <p>7 Q. What knowledge is okay, and what 15:22:53</p> <p>8 knowledge is not okay? I think you said 15:22:55</p> <p>9 generalized and then specific. So how do you 15:22:57</p> <p>10 draw the line between generalized knowledge and 15:23:00</p> <p>11 specific knowledge -- 15:23:02</p> <p>12 MR. POLITO: Objection. 15:23:02</p> <p>13 BY MR. VANDEVELDE: 15:23:03</p> <p>14 Q. -- about what's in an engineer's 15:23:03</p> <p>15 brain? 15:23:05</p> <p>16 MR. POLITO: I'm sorry, counsel. 15:23:05</p> <p>17 Objection, vague, outside the 15:23:06</p> <p>18 scope, calls for legal conclusion. 15:23:08</p> <p>19 A. If the engineer had gained 15:23:29</p> <p>20 knowledge of a specific solution strategy, 15:23:33</p> <p>21 specific testing strategy, even a specific code 15:23:36</p> <p>22 problem in environment A and how that 15:23:42</p> <p>23 particular problem could be fixed or remedied, 15:23:48</p> <p>24 when he goes to another customer's 15:23:55</p> <p>25 environment -- 15:23:58</p> <p style="text-align: right;">Page 233</p>

60 (Pages 234 - 237)

[REDACTED]

21 Q. Let me make a hypothetical. Let's 15:46:02
22 say an engineer at Rimini working for client A 15:46:05
23 figures out that a particular table, let's call 15:46:12
24 it state tax table, needs to be changed in some 15:46:16
25 way. A different engineer implementing the 15:46:19

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1 same fix, the same update for client B emails 15:46:24
2 the first engineer and says, "Hey, do you know 15:46:31
3 what table will need to be changed to implement 15:46:33
4 this fix?" And the engineer replies, "The 15:46:37
5 state tax table." Is that cross-use because 15:46:40
6 the name of the table was referenced? 15:46:43
7 MR. POLITO: Objection, incomplete 15:46:45
8 hypothetical. 15:46:46
9 A. Where the knowledge and use of the 15:46:52
10 first customer's licensed environment was used 15:46:56
11 to derive that information, the first 15:47:00
12 customer's license was used to derive that 15:47:05
13 information, it's my understanding that it's 15:47:08
14 cross-use for that use of the first customer's 15:47:14
15 environment to be used on behalf of a second or 15:47:20
16 different customer for use in that customer's 15:47:25
17 licensed -- that second customer's licensed 15:47:30
18 environment. 15:47:33
19 Now, again, your -- your 15:47:33
20 hypothetical is -- is extremely strained 15:47:35
21 because we're talking about a single table 15:47:36
22 name, and that, again, is not the kind of thing 15:47:38
23 that I offer opinion on in my report. But if 15:47:40
24 I'm following your hypothetical correctly, to 15:47:43
25 the extent that that knowledge and that 15:47:46

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<p>1 technical specification that -- that's being 15:47:50</p> <p>2 shared between the two engineers verbally or 15:47:52</p> <p>3 written was the product of the use of a first 15:47:55</p> <p>4 customer's environment, it's my understanding 15:47:58</p> <p>5 that that would be cross-use. 15:48:00</p> <p>6 Q. Even if it's -- even if that 15:48:02</p> <p>7 communication and the sharing of knowledge is 15:48:05</p> <p>8 just the particular table that needs to be 15:48:06</p> <p>9 fixed or updated? 15:48:11</p> <p>10 A. Well, again, you're choosing an 15:48:15</p> <p>11 extreme case here. But under my understanding 15:48:17</p> <p>12 of -- of what's prohibited in cross-use because 15:48:20</p> <p>13 the first customer's environment was used to 15:48:22</p> <p>14 create that knowledge, then the reuse of that 15:48:26</p> <p>15 creation in a second customer's environment, 15:48:30</p> <p>16 even for a comparatively simple fix, would 15:48:33</p> <p>17 be -- constitute a form of cross-use. 15:48:37</p> <p>18 Q. Okay. 15:48:39</p> <p>19 Back to technical specifications 15:48:41</p> <p>20 for a second. And we'll get to the EBS one I 15:48:42</p> <p>21 think you found earlier. 15:48:45</p> <p>22 But are you offering any opinions 15:48:47</p> <p>23 that any technical specifications with respect 15:48:49</p> <p>24 to the Siebel product line contain any Oracle 15:48:51</p> <p>25 code are being cross-used? 15:48:55</p> <p style="text-align: right;">Page 250</p>	<p>1 [REDACTED] [REDACTED]</p> <p>2 [REDACTED] [REDACTED]</p> <p>3 [REDACTED] [REDACTED]</p> <p>4 [REDACTED] [REDACTED]</p> <p>5 [REDACTED] [REDACTED]</p> <p>6 [REDACTED] [REDACTED]</p> <p>7 [REDACTED] [REDACTED]</p> <p>8 [REDACTED] [REDACTED]</p> <p>9 [REDACTED] [REDACTED]</p> <p>10 [REDACTED] [REDACTED]</p> <p>11 [REDACTED] [REDACTED]</p> <p>12 [REDACTED] [REDACTED]</p> <p>13 [REDACTED] [REDACTED]</p> <p>14 [REDACTED] [REDACTED]</p> <p>15 [REDACTED] [REDACTED]</p> <p>16 [REDACTED] [REDACTED]</p> <p>17 [REDACTED] [REDACTED]</p> <p>18 [REDACTED] [REDACTED]</p> <p>19 [REDACTED] [REDACTED]</p> <p>20 [REDACTED] [REDACTED]</p> <p>21 [REDACTED] [REDACTED]</p> <p>22 [REDACTED] [REDACTED]</p> <p>23 [REDACTED] [REDACTED]</p> <p>24 [REDACTED] [REDACTED]</p> <p>25 [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 252</p>
<p>1 A. For Siebel? 15:48:59</p> <p>2 Q. Yeah. 15:49:01</p> <p>3 A. I -- let me check, but I do not 15:49:07</p> <p>4 recall having done so for Siebel. 15:49:09</p> <p>5 [Pause.] 15:49:31</p> <p>6 Q. Were you able to find any by 15:50:51</p> <p>7 searching your report? 15:50:53</p> <p>8 A. I'm just -- just closing in on 15:50:54</p> <p>9 that area now, counsel. 15:50:55</p> <p>10 I don't recall any specifically in 15:51:52</p> <p>11 the Siebel environment, counsel. 15:51:56</p> <p>12 Q. Okay. 15:51:57</p> <p>13 [REDACTED] [REDACTED]</p> <p>14 [REDACTED] [REDACTED]</p> <p>15 [REDACTED] [REDACTED]</p> <p>16 [REDACTED] [REDACTED]</p> <p>17 [REDACTED] [REDACTED]</p> <p>18 [REDACTED] [REDACTED]</p> <p>19 [REDACTED] [REDACTED]</p> <p>20 [REDACTED] [REDACTED]</p> <p>21 [REDACTED] [REDACTED]</p> <p>22 [REDACTED] [REDACTED]</p> <p>23 [REDACTED] [REDACTED]</p> <p>24 [REDACTED] [REDACTED]</p> <p>25 [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 251</p>	<p>1 [Pause.] 15:53:23</p> <p>2 Q. Why don't we -- why don't we move 15:54:54</p> <p>3 on again? You have searchable versions of your 15:54:56</p> <p>4 report. It's been a number of minutes. If 15:54:59</p> <p>5 you've found one later, your counsel can ask 15:55:02</p> <p>6 you on redirect. 15:55:04</p> <p>7 Why don't we turn to paragraph 21 15:55:05</p> <p>8 of your -- of your supplemental report? Switch 15:55:07</p> <p>9 topics. Let's talk about -- 15:55:13</p> <p>10 A. I'm sorry, paragraph 21? 15:55:16</p> <p>11 Q. Paragraph 21. 15:55:18</p> <p>12 You write: 15:55:28</p> <p>13 [REDACTED] [REDACTED]</p> <p>14 [REDACTED] [REDACTED]</p> <p>15 [REDACTED] [REDACTED]</p> <p>16 [REDACTED] [REDACTED]</p> <p>17 [REDACTED] [REDACTED]</p> <p>18 [REDACTED] [REDACTED]</p> <p>19 [REDACTED] [REDACTED]</p> <p>20 [REDACTED] [REDACTED]</p> <p>21 [REDACTED] [REDACTED]</p> <p>22 [REDACTED] [REDACTED]</p> <p>23 [REDACTED] [REDACTED]</p> <p>24 [REDACTED] [REDACTED]</p> <p>25 [REDACTED] [REDACTED]</p> <p style="text-align: right;">Page 253</p>

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<p>1 *****</p> <p>2 C E R T I F I C A T E</p> <p>3 *****</p> <p>4 I, PAUL J. FREDERICKSON, CA</p> <p>5 Certified Shorthand Reporter No. 13164 and</p> <p>6 WA Certified Court Reporter No. 2419, do</p> <p>7 hereby certify:</p> <p>8 That prior to being examined,</p> <p>9 the witness named in the foregoing</p> <p>10 deposition was by me duly sworn or affirmed</p> <p>11 to testify to the truth, the whole truth and</p> <p>12 nothing but the truth;</p> <p>13 That said deposition was taken</p> <p>14 down by me in shorthand at the time and</p> <p>15 place therein named, and thereafter reduced</p> <p>16 to print by means of computer-aided</p> <p>17 transcription; and the same is a true,</p> <p>18 correct and complete transcript of said</p> <p>19 proceedings.</p> <p>20 I further certify that I am not</p> <p>21 interested in the outcome of the action.</p> <p>22 Witness my hand this 26th day</p> <p>23 of September 2018.</p> <p>24  PAUL J. FREDERICKSON, CCR, CSR</p> <p>25 WA CCR 2419 CA CSR 13164</p> <p>Expiration date: March 31, 2019</p>	Page 354
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